

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

ZYNGA INC.,

Defendant.

Case No. 22-cv-590-GBW

JURY TRIAL DEMANDED

**ZYNGA INC.'S CONCISE STATEMENT OF DISPUTED MATERIAL FACTS AS TO
WHICH THERE IS A GENUINE ISSUE TO BE TRIED IN SUPPORT OF ITS
OPPOSITION TO IBM CORP.'S MOTION FOR SUMMARY JUDGMENT #1 OF
NO ANTICIPATION FOR THE ASSERTED CLAIMS OF U.S. PATENT NO. 7,072,849**

Dated: April 22, 2024

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Pursuant to the Court’s Scheduling Order (D.I. 89 ¶ 14(b)), Defendant Zynga Inc. (“Zynga”) hereby provides its Concise Statement of Disputed Facts in opposition to Plaintiff International Business Machines Corp.’s (“IBM”) Motion for Summary Judgment #1 (D.I. 294).

I. STATEMENT OF DISPUTED MATERIAL FACTS

1. IBM and its experts have repeatedly asserted that Zynga’s games perform the “selectively storing” limitation of claims 1 and 13 of the ’849 patent by downloading advertising objects and storing them in a cache prior to display—in other words, storing (e.g., in cache) prior to being displayed to a user. *See, e.g.*, Ex. 2 (Thompson Op., Ex. E) ¶ 188; Ex. 3 (Thompson Op., Ex. D) ¶ 261; Ex. 4 (Thompson Op., Ex. C) ¶ 154; *see also* Ex. 6 (Martin Dep.) at 71:23-73:16, 255:17-20.¹

2. To the extent IBM and its experts’ interpretation and application of the Court’s construction is correct, the [REDACTED] (D.I. 297, Ex. 1D) teaches the “selectively storing” limitation of claims 1 and 13 of the ’849 patent. *See, e.g.*, Ex. 1 ¶¶ 1026-28.

3. To the extent IBM and its experts’ interpretation and application of the Court’s construction is correct, Hurly (D.I. 297, Ex. 1C) teaches the “selectively storing” limitation of claims 1 and 13 of the ’849 patent. *See, e.g.*, Ex. 1 ¶¶ 1282-84.

4. To the extent IBM and its experts’ interpretation and application of the Court’s construction is correct, Salomon (D.I. 297, Ex. 1B) teaches the “selectively storing” limitation of claims 1 and 13 of the ’849 patent. *See, e.g.*, Ex. 1 ¶¶ 1553-55.

5. Salomon teaches the “applications” limitation of claims 1, 8, 9, 12, 13, 21, and 22 of the ’849 patent, which the Court construed as “information events composed of a sequence of one or more pages opened at a screen.” *See, e.g.*, Ex. 1 ¶¶ 100, 150, 886, 1476-84, 1493-97, 1506-

¹ Unless otherwise noted, all exhibits cited herein are attached to the Declaration of Brooks J. Kenyon filed concurrently herewith.

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6. Salomon teaches “electronic magazine (EMAG) articles,” which a POSITA would have understood to be the claimed “applications” of claims 1, 8, 9, 12, 13, 21, and 22 of the ’849 patent. *See, e.g.*, Ex. 1 ¶¶ 100, 886, 1476-84, 1493-97, 1506-10.

Dated: April 22, 2024

Respectfully submitted,

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